

Patricia M. French  
Senior Attorney  
Legal

300 Friberg Parkway  
Westborough, MA 01581  
(508) 836.7394  
Fax: (508) 836.7039  
pfrench@nisource.com

23, 2003

**BY COURIER**

Denise L. Desautels, Esq., Presiding Officer  
Selma Urman, Esq., Presiding Officer  
Energy Facilities Siting Board  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

Rulemaking, EFSB 02-RM-02

Dear Hearings Officers Desautels and Urman:

Enclosed for filing on behalf of Bay State Gas Company ("Bay State"), please find

- (1) Motion of Bay State for Leave to File Comments Out of Time;
- (2) Late-Filed Comments of Bay State in response to the Energy Facilities Siting Board's ("Siting Board") June 5, 2003 request for comments.

Please do not hesitate to telephone me with any questions

Very truly yours

  
Patricia M. French

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS  
ENERGY FACILITIES SITING BOARD**

Energy Facilities Siting Board Rulemaking )

EFSB 02-RM-2

**MOTION FOR LEAVE TO FILE  
COMMENTS OUT OF TIME**

Pursuant to G.L. c. 30A, § 11, 980 C.M.R. § 1.02(1) and 980 C.M.R. § 1.03 (7), Bay State Gas Company ("Bay State") hereby moves the Department of Telecommunications and Energy ("Department") to grant it leave to file its comments out-of-time in this proceeding. In support of its motion and as good cause to permit this filing out-of-time, Bay State would state as follows:

1. Bay State is a jurisdictional gas company as defined in G.L. c. 164, §1
2. Bay State's principal office is 300 Friberg Parkway, Westborough Massachusetts 01581.
3. On June 5, 2003, the Energy Facilities Siting Board issued a set of questions to which it sought additional comment on certain aspects of draft regulation 980 CMR 15.00. The deadline for filing comments was set for June 20, 2003.
4. Pursuant to 980 C.M.R. 1.03(7), extensions may be granted before time expires to act and pursuant to 980 C.M.R. 1.02(1), the Board or any Presiding Officer may grant a waiver from its rules for good cause shown. As good cause to request leave to file its comments out-of-time, pursuant to 980 C.M.R. 1.02(1) and 980 C.M.R. 1.03(7), Bay State avers that its late filing occurred because the press of other business delayed the operations and regulatory meetings intended to codify Bay State's comments. When Bay State sought permission to seek an extension before time to act expired, on June 20, 2003, it was informed no one was available at the Siting Board to grant such a request. Accordingly, Bay State seeks leave to file out of time.
5. As additional good cause, Bay State indicates that its lateness is de minimis (filing of comments will occur just one business day past the deadline); and (2) no prejudice could come to any party as a result of Bay State's late-filed comments.

WHEREFORE, for all the reasons set forth, Bay State Gas Company respectfully requests that the Energy Facilities Siting Board grant its motion for leave to file its comments out of time.

Respectfully submitted,

**BAY STATE GAS COMPANY**

By its attorney,



Patricia M. French  
Senior Attorney  
NiSource Corporate Services  
300 Friberg Parkway  
Westborough, MA 01581  
(508) 836-7394  
fax (508) 836-7039  
[pfrench@nisource.com](mailto:pfrench@nisource.com)

Dated: June 23, 2003

**COMMONWEALTH OF MASSACHUSETTS  
ENERGY FACILITIES SITING BOARD**

Energy Facilities Siting Board Rulemaking )

EFSB 02-RM-2

**LATE-FILED COMMENTS OF BAY STATE GAS COMPANY**

In response to the Energy Facilities Siting Board's request for comments dated June 5, 2003, Bay State provides the following comments

**Question 1: Differentiating Between a Single Pipeline and Two Contiguous Pipelines That Serve a Single Purpose**

- 1** Please refer to the attached May 6, 2003 Siting Board Memorandum ("Memorandum") that was sent as a basis for the workshop discussion. Specifically, refer to Segmentation. Is there a way of consistently differentiating between (1) a single pipeline and (2) two contiguous pipelines that serve different purposes? Please give examples of the kinds of pipelines that would fit each definition.

Bay State recognizes the Siting Board concern review of jurisdictional facilities<sup>2</sup> may not be undertaken according to legislative intent if a utility installs a single project over a period that exceeds one year. In response, the Siting Board proposes to define the installation of contiguous facilities over some span of years as a single project.

However, for rulemaking purposes, a broad brush definition is inappropriate to determine jurisdiction. Contiguous facilities may, in total, be greater than one mile in length, but can easily represent clearly separate projects. For instance, assume Bay State installs facilities of just under one mile for the purpose of improving pressure and deliverability to its distribution system in a certain area. Assume that within a couple of years, Bay State

---

Note that Bay State has filed this date a Motion for Leave to File these comments out of time.

<sup>2</sup> G.L. c. 164, § 69G defines a jurisdictional pipeline as "a new pipeline for the transmission of gas having a normal operating pressure above 100 pounds per square inch gauge ('psig') which is greater than one mile in length".

extends these facilities to meet the needs of a new customer unanticipated and unknown when the facilities were first built. If the Siting Board's proposal were adopted, the combined facilities would become jurisdictional at the time of the new (later) customer extension, in spite of the fact that most of the facilities had already been installed and put to use by the Company years before.

In order to avoid this inconsistency, Bay State proposes that the rules reflect an exemption from Siting Board review for the situation when two contiguous projects *are constructed for separate purposes*, but total more than one mile in length.

#### **Question 2: Defining a "New Customer"**

2. Please refer to Segmentation, Option 3 in the Memorandum. Certain commenters suggested that the term "new customer" is too restrictive (*e.g.*, an industrial park with more than one tenant may not be considered "a new customer"). Please provide any suggested alternative language that would address this concern while remaining consistent with the statute.

Bay State proposes the Siting Board define a "new customer" as any customer evidenced by the installation of a customer meter or by the act of upgrading of existing facilities to serve the customer. For example, Bay State recommends, in the case of an industrial park, that extending the gas line to provide service to the park is a single project. Subsequent extensions in later years within the park to serve other customers should be considered separate projects.

#### **Question 3: Construction in an Existing Right of Way**

3. Please refer to the Memorandum, Replacement Projects, Option 2. Certain commenters suggested that the proposed regulation should provide an exemption from Siting Board review for any pipeline construction along the same right of way as an existing pipeline, including pipeline construction that would result in an increase in capacity. Please provide arguments as to whether this approach is consistent with the definition of "facility" as set forth in G. L. c. 164, § 69G. If the approach might be recrafted in certain

ways to be consistent with the statute, please provide suggested alternative language that would accomplish this.

In Bay State's view, replacement of facilities in an existing right-of-way should be exempt from Siting Board review *unless* the project involves a material replacement. Because existing right-of-way-construction impacts the environment minimally, particularly when compared to the impact of installing of new facilities, an exemption is warranted. A material replacement would be a replacement of facilities that are greater than one mile in length and will, when completed, operate at greater than 100 psig, where, prior to construction, the facilities operated below 100 psig. Further, in order for a replacement to be material, the facilities that are being replaced should be used and useful, fulfilling the obligation to provide reliable service.

**Question 4: Construction to Meet Emergencies**

- 4 Please refer to the Memorandum, Emergency Construction, Option 3. The Siting Board's goal is to expedite its review process when an emergency arises, and, when warranted, to allow for immediate construction of a pipeline. Please provide any suggested language that would improve this option.

Option 3 (for Emergency Construction) is acceptable to Bay State.

Bay State Gas Company appreciates the opportunity to provide these comments.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorney,




Patricia M. French  
Senior Attorney  
NiSource Corporate Services  
300 Friberg Parkway  
Westborough, MA 01581  
(508) 836-7394  
fax (508) 836-7039

### CERTIFICATION

I, Patricia M. French, certify that I have caused a copy of the within to be served on each of the individuals on the service list for EFSB 02-RM-2 on file with the Energy Facilities Siting Board.

Dated at Westborough, Massachusetts, this 23<sup>rd</sup> day of June, 2003.

  
\_\_\_\_\_  
Patricia M. French